

SERIAL 08066 RFP ENERGY SAVING SERVICES, MARICOPA COUNTY FACILITIES

DATE OF LAST REVISION: September 30, 2008

CONTRACT END DATE: August 31, 2011

CONTRACT PERIOD THROUGH AUGUST 31, 2011

TO: All Departments

FROM: Department of Materials Management

SUBJECT: Contract for **ENERGY SAVING SERVICES, MARICOPA COUNTY FACILITIES**

Attached to this letter is published an effective purchasing contract for products and/or services to be supplied to Maricopa County activities as awarded by Maricopa County on **August 20, 2008**.

All purchases of products and/or services listed on the attached pages of this letter are to be obtained from the vendor holding the contract. Individuals are responsible to the vendor for purchases made outside of contracts. The contract period is indicated above.

Wes Baysinger, Director
Materials Management

SD/bg
Attach

Copy to: Materials Management
James Foley, Facilities Management

(Please remove Serial 99011-RFP from your contract notebooks)



CONTRACT PURSUANT TO RFP

SERIAL 08066-RFP

This Contract is entered into this 20TH day of August, 2008 by and between Maricopa County ("County"), a political subdivision of the State of Arizona, and APS Energy Services, an Arizona corporation ("Contractor") for the purchase of Energy Saving services.

1.0 TERM

- 1.1 This Contract is for a term of three (3) years, beginning on the 20th day of August 20, 2008 and ending the 31st day of August, 2011.
- 1.2 The County may, at its option and with the agreement of the Contractor, extend the period of this Contract for additional terms up to a maximum of three (3) years. The County shall notify the Contractor in writing of its intent to extend the Contract period at least thirty (30) calendar days prior to the expiration of the original contract period, or any additional term thereafter.

2.0 PAYMENT

- 2.1 As consideration for performance of the duties described herein, County shall pay Contractor the sum(s) stated in Exhibit "A."
- 2.2 Payment shall be made upon the County's receipt of a properly completed invoice. Invoices shall contain the following information: Contract number, purchase order number, item numbers, description of services, unit prices, extended totals and any applicable sales tax.
- 2.3 INVOICES AND PAYMENTS:

2.3.1 The Contractor shall submit two (2) legible copies of their detailed invoice before payment(s) can be made. At a minimum, the invoice must provide the following information:

- 2.3.1.1 Company name, address and contact
- 2.3.1.2 County bill-to name and contact information
- 2.3.1.3 Contract Serial Number
- 2.3.1.4 County purchase order number
- 2.3.1.5 Invoice number and date
- 2.3.1.6 Payment terms
- 2.3.1.7 Date of service
- 2.3.1.8 Contract Item number(s)
- 2.3.1.9 Description of services
- 2.3.1.10 Pricing per unit of purchase
- 2.3.1.11 Extended price
- 2.3.1.12 Arrival and completion time
- 2.3.1.13 Total Amount Due

Problems regarding billing or invoicing shall be directed to the using agency as listed on the Purchase Order.

- 2.3.2 Payment will be made to the Contractor by Accounts Payable through the Maricopa County Vendor Express Payment Program. This is an Electronic Funds Transfer (EFT)

process. After Award the Contractor shall fill out an EFT Enrollment form (to be provided by the Procurement Officer) or as located on the County Department of Finance Website as a fillable PDF document (www.maricopa.gov/finance/).

- 2.3.3 EFT payments to the routing and account numbers designated by the Contractor will include the details on the specific invoices that the payment covers. The Contractor is required to discuss remittance delivery capabilities with their designated financial institution for access to those details.

3.0 DUTIES

- 3.1 The Contractor shall perform all duties stated in Exhibit "B."
- 3.2 The Contractor shall perform services at the location(s) and time(s) stated in Exhibit "B-1".
- 3.3 Phase two projects will be completed as authorized by County using the Performance Contract, Exhibit "C".
- 3.4 During the Contract term, County shall provide Contractor's personnel with adequate workspace for consultants and such other related facilities as may be required by Contractor to carry out its contractual obligations.

4.0 TERMS & CONDITIONS

4.1 Limitation of Liability.

- 4.1.1 Notwithstanding anything to the contrary in this Agreement, APS Energy Services' liability to Maricopa County shall be limited to unmitigatable direct damages actually incurred by Maricopa County with respect to any and all claims arising out of the performance or nonperformance of APS Energy Services' obligations under this Agreement and shall not in total exceed the amounts paid under this Agreement.
- 4.1.2 Neither party, nor its respective officers, elected officials, directors, employees, agents, advisers, representatives, affiliates, or successor or assigns will be liable to the other party for any indirect, consequential, special, or punitive damages for any actions resulting from or arising out of this agreement or any order, whether based on contract, warranty, tort (including negligence), strict liability, professional liability, contribution, or otherwise.

- 4.2 APS Energy Services agrees to indemnify and hold harmless Maricopa County, its elected officials, directors, officers, employees, and agents (each an "**Indemnitee**") from and against any and all claims, demands, losses, damages, costs and expenses (including without limitation, the Indemnitee's reasonable attorneys' fees and costs) to the extent actually or allegedly arising or resulting from personal injury (including loss of life) or tangible property damage or loss, caused by the negligence or intentional misconduct of APS Energy Services, employees, agents or subcontractors of any tier in the performance of the Work, provided that this indemnity shall not be construed to extend to claims, demands, losses, damages, costs, or expenses arising from the negligence or willful misconduct of any Indemnitee or its elected officials, directors, officers, employees, agents, or contractors.

The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

The scope of this indemnification does not extend to the sole negligence of County.

4.3 INSURANCE REQUIREMENTS:

Contractor, at Contractor's own expense, shall purchase and maintain the herein stipulated minimum insurance from a company or companies duly licensed by the State of Arizona and possessing a current A.M. Best, Inc. rating of B++6. In lieu of State of Arizona licensing, the stipulated insurance may be purchased from a company or companies, which are authorized to do

business in the State of Arizona, provided that said insurance companies meet the approval of County. The form of any insurance policies and forms must be acceptable to County.

All insurance required herein shall be maintained in full force and effect until all work or service required to be performed under the terms of the Contract is satisfactorily completed and formally accepted. Failure to do so may, at the sole discretion of County, constitute a material breach of this Contract.

Contractor's insurance shall be primary insurance as respects County, and any insurance or self-insurance maintained by County shall not contribute to it.

Any failure to comply with the claim reporting provisions of the insurance policies or any breach of an insurance policy warranty shall not affect the County's right to coverage afforded under the insurance policies.

The insurance policies may provide coverage that contains deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall not be applicable with respect to the coverage provided to County under such policies. Contractor shall be solely responsible for the deductible and/or self-insured retention and County, at its option, may require Contractor to secure payment of such deductibles or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit.

County reserves the right to request and to receive, within 10 working days, certified copies of any or all of the herein required insurance policies and/or endorsements. County shall not be obligated, however, to review such policies and/or endorsements or to advise Contractor of any deficiencies in such policies and endorsements, and such receipt shall not relieve Contractor from, or be deemed a waiver of County's right to insist on strict fulfillment of Contractor's obligations under this Contract.

The insurance policies required by this Contract, except Workers' Compensation, and Errors and Omissions, shall name County, its agents, representatives, officers, directors, officials and employees as Additional Insureds.

The policies required hereunder, except Workers' Compensation, and Errors and Omissions, shall contain a waiver of transfer of rights of recovery (subrogation) against County, its agents, representatives, officers, directors, officials and employees for any claims arising out of Contractor's work or service.

Contractor is required to procure and maintain the following coverages indicated by a checkmark:

4.3.1 Commercial General Liability.

Commercial General Liability insurance and, if necessary, Commercial Umbrella insurance with a limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products/Completed Operations Aggregate, and \$2,000,000 General Aggregate Limit. The policy shall include coverage for bodily injury, broad form property damage, personal injury, products and completed operations and blanket contractual coverage, and shall not contain any provision which would serve to limit third party action over claims. There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability arising from explosion, collapse, or underground property damage.

4.3.2 Automobile Liability.

Commercial/Business Automobile Liability insurance and, if necessary, Commercial Umbrella insurance with a combined single limit for bodily injury and property damage of not less than \$1,000,000 each occurrence with respect to any of the Contractor's owned, hired, and non-owned vehicles assigned to or used in performance of the Contractor's work or services under this Contract.

4.3.3 Workers' Compensation.

Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Contractor's employees engaged in the performance of the work or services under this Contract; and Employer's Liability insurance of not less than \$1,000,000 for each accident, \$100,000 disease for each employee, and \$500,000 disease policy limit.

Contractor waives all rights against County and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the Workers' Compensation and Employer's Liability or commercial umbrella liability insurance obtained by Contractor pursuant to this Contract.

4.3.4 Errors and Omissions Insurance.

Errors and Omissions insurance and, if necessary, Commercial Umbrella insurance, which will insure and provide coverage for errors or omissions of the Contractor, with limits of no less than \$1,000,000 for each claim.

4.3.5 Certificates of Insurance.

4.3.5.1 Prior to commencing work or services under this Contract, Contractor shall furnish the County with certificates of insurance, or formal endorsements as required by the Contract in the form provided by the County, issued by Contractor's insurer(s), as evidence that policies providing the required coverage, conditions and limits required by this Contract are in full force and effect. Such certificates shall identify this contract number and title.

In the event any insurance policy (ies) required by this Contract is (are) written on a "claims made" basis, coverage shall extend for two (2) years past completion and acceptance of Contractor's work or services and as evidenced by annual Certificates of Insurance.

If a policy does expire during the life of the Contract, a renewal certificate must be sent to County fifteen (15) days prior to the expiration date.

4.3.5.2 Cancellation and Expiration Notice.

Insurance required herein shall not be permitted to expire, be canceled, or materially changed without thirty (30) days prior written notice to the County.

4.5 BOND REQUIREMENT: (Each project, during construction)

Concurrently with the submittal of the Contract, the Contractor shall furnish the Contracting Agency the following bonds, which shall become binding upon the award of the contract to the Contractor.

- (A) A Performance Bond equal to the full Contract amount conditioned upon the faithful performance of the Contract in accordance with plans, specifications and conditions thereof. Such bond shall be solely for the protection of the Contracting Agency awarding the Contract.
- (B) A Payment Bond equal to the full Contract amount solely for the protection of claimants supplying labor and materials to the Contractor or his Subcontractors in the prosecution of the work provided for in such Contract.

Each such bond shall include a provision allowing the prevailing party in a suit on such bond to recover as a part of his judgment such reasonable attorney's fees as may be fixed by a judge of the court.

Each bond shall be executed by a surety company or companies holding a certificate of authority to transact surety business in the State of Arizona issued by the Director of the Department of Insurance. The bonds shall not be executed by an individual surety or sureties. The bonds shall be made payable and acceptable to the Contracting Agency. The bonds shall be written or countersigned by an authorized representative of the surety who is either a resident of the State of Arizona or whose principal office is maintained in this state, as by law required, and the bonds shall have attached thereto a certified copy of the Power of Attorney of the signing official. In addition, said company or companies shall be rated "Best-A" or better as required by the Contracting Agency, as currently listed in the most recent Best Key Rating Guide, published by the A.M. Best Company.

4.6 NOTICES:

All notices given pursuant to the terms of this Contract shall be addressed to:

For County:

Maricopa County
Department of Materials Management
Attn: Director of Purchasing
320 West Lincoln Street
Phoenix, Arizona

For Contractor:

Attn: managing Director
APS Energy Services
400 East Van Buren Street, Suite 750
Phoenix, AZ. 85004

4.7 REQUIREMENTS CONTRACT:

4.7.1 Contractor signifies its understanding and agreement by signing this document that this Contract is a requirements contract. This Contract does not guarantee any purchases will be made. Orders will only be placed when County identifies a need and issues a purchase order or a written notice to proceed.

4.7.2 County reserves the right to cancel purchase orders or notice to proceed within a reasonable period of time after issuance. Should a purchase order or notice to proceed be canceled, the County agrees to reimburse the Contractor for actual and documented costs incurred by the Contractor. The County will not reimburse the Contractor for any avoidable costs incurred after receipt of cancellation, or for lost profits, or shipment of product or performance of services prior to issuance of a purchase order or notice to proceed.

4.8 PRICE ADJUSTMENTS:

Any requests for reasonable price adjustments must be submitted sixty (60) days prior to the Contract expiration date etc. Requests for adjustment in cost of labor and/or materials must be supported by appropriate documentation. If County agrees to the adjusted price terms, County shall issue written approval of the change. The reasonableness of the request will be determined by comparing the request with the (Consumer Price Index) or by performing a market survey.

4.9 TERMINATION FOR CONVENIENCE:

The County reserves the right to terminate the Contract, in whole or in part at any time, when in the best interests of the County without penalty or recourse. Upon receipt of the written notice, the Contractor shall immediately stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the County. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the County upon demand.

The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination.

4.10 TERMINATION FOR DEFAULT:

4.10.1 In addition to the rights reserved in the Contract, the County may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.

4.10.2 Upon termination under this paragraph, all goods, materials, documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the County on demand.

4.10.3 The County may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Contract. The Contractor shall be liable to the County for any excess costs incurred by the County in procuring materials or services in substitution for those due from the Contractor.

4.10.4 The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

4.11 STATUTORY RIGHT OF CANCELLATION FOR CONFLICT OF INTEREST:

Notice is given that pursuant to A.R.S. §38-511 the County may cancel this Contract without penalty or further obligation within three years after execution of the contract, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the County is at any time while the Contract or any extension of the Contract is in effect, an employee or agent of any other party to the Contract in any capacity or consultant to any other party of the Contract with respect to the subject matter of the Contract. Additionally, pursuant to A.R.S §38-511 the County may recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the County from any other party to the contract arising as the result of the Contract.

4.12 OFFSET FOR DAMAGES;

In addition to all other remedies at law or equity, the County may offset from any money due to the Contractor any amounts Contractor owes to the County for damages resulting from breach or deficiencies in performance under this contract.

4.13 ADDITIONS/DELETIONS OF SERVICE:

The County reserves the right to add and/or delete products and/or services provided under this Contract. If a requirement is deleted, payment to the Contractor will be reduced proportionately to the amount of service reduced in accordance with the proposal price. If additional services and/or products are required from this Contract, prices for such additions will be negotiated between the Contractor and the County.

4.14 SUBCONTRACTING:

The Contractor may not assign this Contract or subcontract to another party for performance of the terms and conditions hereof without the written consent of the County, which shall not be unreasonably withheld. All correspondence authorizing subcontracting must reference the Proposal Serial Number and identify the job project.

4.15 AMENDMENTS:

All amendments to this Contract shall be in writing and approved/signed by both parties. Maricopa County Materials Management shall be responsible for approving all amendments for Maricopa County.

4.16 RETENTION OF RECORDS:

The Contractor agrees to retain all financial books, records, and other documents relevant to this Contract for five (5) years after final payment or until after the resolution of any audit questions which could be more than five (5) years, whichever is longer. The County, Federal or State auditors and any other persons duly authorized by the Department shall have full access to, and the right to examine, copy and make use of, any and all said materials.

If the Contractor's books, records and other documents relevant to this Contract are not sufficient to support and document that requested services were provided, the Contractor shall reimburse Maricopa County for the services not so adequately supported and documented.

4.17 AUDIT DISALLOWANCES:

If at any time, County determines that a cost for which payment has been made is a disallowed cost, such as overpayment, County shall notify the Contractor in writing of the disallowance. County shall also state the means of correction, which may be but shall not be limited to adjustment of any future claim submitted by the Contractor by the amount of the disallowance, or to require repayment of the disallowed amount by the Contractor.

4.18 ALTERNATIVE DISPUTE RESOLUTION:

4.18.1 After the exhaustion of the administrative remedies provided in the Maricopa County Procurement Code, any contract dispute in this matter is subject to compulsory arbitration. Provided the parties participate in the arbitration in good faith, such arbitration is not binding and the parties are entitled to pursue the matter in state or federal court sitting in Maricopa County for a de novo determination on the law and facts. If the parties cannot agree on an arbitrator, each party will designate an arbitrator and those two arbitrators will agree on a third arbitrator. The three arbitrators will then serve as a panel to consider the arbitration. The parties will be equally responsible for the compensation for the arbitrator(s). The hearing, evidence, and procedure will be in accordance with Rule 74 of the Arizona Rules of Civil Procedure. Within ten (10) days of the completion of the hearing the arbitrator(s) shall:

4.18.1.1 Render a decision;

4.18.1.2 Notify the parties that the exhibits are available for retrieval; and

4.18.1.3 Notify the parties of the decision in writing (a letter to the parties or their counsel shall suffice).

4.18.2 Within ten (10) days of the notice of decision, either party may submit to the arbitrator(s) a proposed form of award or other final disposition, including any form of award for attorneys' fees and costs. Within five (5) days of receipt of the foregoing, the opposing party may file objections. Within ten (10) days of receipt of any objections, the arbitrator(s) shall pass upon the objections and prepare a signed award or other final disposition and mail copies to all parties or their counsel.

4.18.3 Any party which has appeared and participated in good faith in the arbitration proceedings may appeal from the award or other final disposition by filing an action in the state or federal court sitting in Maricopa County within twenty (20) days after date of the award or other final disposition. Unless such action is dismissed for failure to prosecute, such action will make the award or other final disposition of the arbitrator(s) a nullity.

4.19 SEVERABILITY:

The invalidity, in whole or in part, of any provision of this Contract shall not void or affect the validity of any other provision of this Contract.

4.20 RIGHTS IN DATA:

The County shall own have the use of all data and reports resulting from this Contract without additional cost or other restriction except as provided by law. Each party shall supply to the other party, upon request, any available information that is relevant to this Contract and to the performance hereunder.

4.21 INTEGRATION:

This Contract represents the entire and integrated agreement between the parties and supersedes all prior negotiations, proposals, communications, understandings, representations, or agreements, whether oral or written, express or implied.

4.22 GOVERNING LAW:

This Contract shall be governed by the laws of the state of Arizona. Venue for any actions or lawsuits involving this Contract will be in Maricopa County Superior Court or in the United States District Court for the District of Arizona, sitting in Phoenix, Arizona

IN WITNESS WHEREOF, this Contract is executed on the date set forth above.

CONTRACTOR

AUTHORIZED SIGNATURE

Robert W. Greengard
Robert W. Greengard - Managing Director
PRINTED NAME AND TITLE

400 E Van Buren Phoenix, AZ
ADDRESS

8-14-08
DATE

MARICOPA COUNTY

BY: *Richard Rembert*
CHAIRMAN, BOARD OF SUPERVISORS

SEP 12 2008
DATE

ATTESTED:

Sam McLaughlin
CLERK OF THE BOARD 08/22/08

SEP 12 2008
DATE

APPROVED AS TO FORM:

John Smith
DEPUTY MARICOPA COUNTY ATTORNEY

8/28/8
DATE

**EXHIBIT A
PRICING**

SERIAL 08066

PRICING SHEET: NIGP CODE 91016

BIDDER NAME:	APS ENERGY SERVICES COMPANY, INC.
VENDOR # :	W000013095
BIDDER ADDRESS:	400 EAST VAN BUREN STREET, SUITE 750 PHOENIX AZ. 85004
P.O. ADDRESS:	MAIL STATION 8103, P.O. BOX 53901 PHOENIX AZ. 85072-3901
BIDDER PHONE #:	602-744-5000
BIDDER FAX #:	602-744-5275
COMPANY WEB SITE:	WWW.APSES.COM
COMPANY CONTACT (REP):	BOB GERORGEOFF
E-MAIL ADDRESS (REP):	ROBERT.GEORGEOFF@APSES.COM

WILLING TO ACCEPT FUTURE SOLICITATIONS VIA EMAIL: YES

OTHER GOV'T. AGENCIES MAY USE THIS CONTRACT: YES

PAYMENT TERMS: NET 30

1.0 PRICE FOR TECHNICAL AUDITS (YEAR 1)

	COST PER SQ. FT.	TOTAL SQ. FT.	TOTAL COST PER CAMPUS ORIGINAL	TOTAL COST PER CAMPUS REVISED
1. Downtown Campus	<u>\$0.072</u>	3,315,134	<u>\$ 140,118.80</u>	\$238,689.65
2. Downtown Jails	<u>\$0.072</u>	2,055,990	<u>\$ 95,207.33</u>	\$148,031.28
3. Durango Campus	<u>\$0.072</u>	1,637,536	<u>\$ 110,696.00</u>	\$117,902.59
4. Lower Buckeye Jails	<u>\$0.072</u>	989,759	<u>\$ 93,589.13</u>	\$71,262.65
5. Southeast Campus.	<u>\$0.072</u>	858,526	<u>\$ 59,040.29</u>	\$61,813.87
6. Durango Jails	<u>\$0.072</u>	586,623	<u>\$ 55,973.38</u>	\$42,236.86
TOTAL			<u>\$ 554,624.93</u>	\$679,936.90

2.0 PRICE FOR TECHNICAL AUDITS (YEARS 2 and 3 - OPTIONAL)

	COST PER SQ. FT.
1. Downtown Campus	<u>\$0.080</u>
2. Downtown Jails	<u>\$0.080</u>
3. Durango Campus	<u>\$0.080</u>
4. Lower Buckeye Jails	<u>\$0.080</u>
5. Southeast Campus.	<u>\$0.080</u>
6. Durango Jails	<u>\$0.080</u>

EXHIBIT B

1.0 INTENT

The intent of this contract is to provide Maricopa County (hereafter referred to as the County) with a comprehensive energy management audit (phase 1) and, if approved by the County, a guaranteed capital improvement services plan for selected facilities owned or managed by the County (phase 2). Phase II is subject to the following conditions. The County

- 1.1 incurs no initial capital costs (unless the County so chooses to finance part or all of the improvements) and achieves significant long-term savings to offset any costs,
- 1.2 achieves a guarantee for energy savings, water savings, and operations and maintenance (O&M) savings (O&M savings includes materials and labor savings and will only be applicable at the option of the County),
- 1.3 obtains consistent levels of occupant comfort and building functionality, and
- 1.4 captures ancillary benefits that may accrue as a direct result of such energy-related services and capital improvements, such as environmental protection, carbon footprint reduction, hazardous materials disposal, etc.
- 1.5 The County reserves the right to utilize excess projected savings from any projects in any manner it's see fit and is not bound to utilize 100% of the savings for energy related projects.

Within the framework of available financing, contractor is to provide the installation and implementation of improvements providing the greatest possible energy and other savings. Essential services and improvements sought are those that will reduce energy consumption in the County facilities, upgrade capital energy-related equipment, reduce building operations and maintenance cost, save costs through fuel switching or improved demand management, and aid in meeting environmental management responsibilities.

The selected contractor will be required to comply with Arizona Revised Statutes, section **34-201** as amended from time to time. This statute provides the groundwork for guaranteed energy savings contracts (or "performance contracts") implemented in the public sector in the State of Arizona.

Five geographic site groups shall be evaluated, with possibly several smaller sites or functional areas added after award:

1. Downtown Campus
2. Downtown Jails
3. Durango Campus
4. Lower Buckeye Jail
5. Southeast Campus.

This contract is divided in to two (2) phases:

Phase 1 will consist of the technical audit that must include estimates of savings; savings must be broken out and not lumped, for each measure. The cost estimate for each measure must include an estimate of all costs including design, engineering, installation, maintenance, repairs and debt services estimate.

Phase 2 will consist of the implementation of the energy savings plans based on the audits that have been formally accepted and approved by the County. The county reserves the rights to have the CONTRACTOR modify their initial estimates based on finance options selected by the County, which could include 100% or some lesser amount of financing by the County.

2.0 SCOPE OF SERVICES

2.1 PHASE I Technical Energy Audit

- 2.1.1 The technical audit must include estimates of savings for each factor. Also, the cost estimate for each factor must include an estimate of all costs including design, engineering, installation, maintenance, repairs and debt services estimate.

APS Energy Services will comply with the technical audit requirements as stated above in 2.1.1.

- 2.1.2 The audit must be completed within six (6) months after award of contract.

APS Energy Services is uniquely staffed with local engineering talent to comply with the audit completion time frame as stated above in 2.1.2.

- 2.1.3 Investment grade audit that shall be signed and sealed by a professional technical Engineer registered in the State of Arizona, specializing in Energy Management. The County reserves the right to select a third-party engineer or have these functions accomplished within the state. All documents created in association with the Investment Grade Audit created under this contract shall be the sole property of the County.

APS Energy Services will comply with the IGA requirements as stated above in 2.1.3.

- 2.1.4 The Contractors' proposed contract terms must include the performance and presentation of results from a detailed technical audit (or "in-depth feasibility study") of acceptable quality to the County. This technical audit will establish the exact scope of the performance contract (or "guaranteed energy cost savings contract") with regard to guaranteed savings and verification methodology. The minimum annual energy, water and O&M cost savings and financing period will be negotiated after completion and acceptance of the technical audit. If the County decides not to enter into a performance contract after the technical audit has been accepted, the County agrees to pay the cost of the audit as quoted in the proposal and the CONTRACTOR agrees to pay the cost of the independent registered professional engineer's proposal review. The technical audit must include estimates of savings for each factor. Also, the cost estimate for each factor must include an estimate of all costs including design, engineering, installation, maintenance, repairs and debt services. (See Exhibit 4, Anticipated Technical Audit Contract.)

Per clarifications provided by Maricopa County dated June 23, 2008 it was stated that Maricopa County will procure and pay for the review independently different from the terms listed above in 2.1.4. APS Energy Services will comply with the clarification.

2.2 PHASE 2 (RETROFITS)

Required Systems and Services Capabilities

Energy systems include, but are not limited to:

APS Energy Services will comply with the required systems and services capabilities as stated below in 2.2.1 – 2.2.4.

- 2.2.1 heating, ventilating and air conditioning (HVAC) equipment

- 2.2.2 energy management and control systems

- 2.2.3 lighting and controlled water heating systems

- 2.2.4 The building envelope and other energy using systems such as laundry, kitchen, and renewable energy systems.

2.2.5 Energy services include, but are not limited to:

APS Energy Services will comply with the energy services stated below in 2.2.5.1 – 2.2.5.5.

- 2.2.5.1 the design, acquisition, installation, and modification of equipments
- 2.2.5.2 commissioning, retro commissioning and project management of new and existing energy equipments
- 2.2.5.3 Routine staff training for preventive maintenance and operations of all energy equipments discussed in previous paragraph.
- 2.2.5.4 At the option of the County, will include monitoring and verification (M&V) services including appropriate measurement and reporting of the performance and savings from improvements. M&V also includes analysis of other opportunities which would not reduce consumption but are aimed at cost savings, such as fuel switching or rate changes.
- 2.2.5.5 At the option of the County, water conservation must be monitored and considered as part of the energy audit.

2.2.6 Ancillary benefits may include, but not limited to:

APS Energy Services will comply with the ancillary benefits as stated below in 2.2.6.1 – 2.2.6.4.

- 2.2.6.1 hazardous materials disposal
- 2.2.6.2 reduce, reuse, and recycle material
- 2.2.6.3 improved occupant comfort or building functionality
- 2.2.6.4 improved indoor air quality, and any unique benefits that may be provided by regular technology upgrades or advanced proprietary technology

These improvements may or may not be quantifiable in a financial sense. The County reserves the right to refuse savings other than energy and water savings.

2.2.7 Guarantee/Shared Savings

Consistent with the understanding developed during the June 17, 2008 Mandatory Meeting, it is the understanding of APS Energy Services that Maricopa County is seeking additional security as directly outlined above or some modification thereof, in addition to the Performance Guarantee provided by the CONTRACTOR. APS Energy Services will comply with guaranteed level of savings and improved performance approach as stated below in 2.2.8.

Improvements and services must result in a guaranteed minimum annual savings option, guaranteed minimum levels of occupant comfort, operations and maintenance, and ancillary services. The combined savings achieved by the installed projects must be sufficient to cover all project costs including debt service and CONTRACTOR fees, maintenance, monitoring and other services, for the duration of the contract term. At a minimum, the savings guarantee should be structured to correspond to the annual financing costs associated with the project. Payments must be linked to actual measured post-retrofit improvements as compared to building performance before the installation of any energy systems and service improvements. The guaranteed savings must be achieved each year. Annual cost savings derived from such improvements beyond the guaranteed

minimum savings will be held by the County, and will not be allocated to shortfalls in other years.

At the discretion of the County, savings will be guaranteed through the use of a **Line of Credit, Certified Check, Certificate of Deposit, Irrevocable Letter of Credit, Corporate Guarantee or a versions of any of these**. Draws against these instruments will be made in any year the County does not achieve the savings the CONTRACTOR guaranteed.

APS Energy Services will comply with Guarantee/Shared Savings requirement as stated above in 2.2.7.

- 2.2.8 Guaranteed Savings. The County requires a minimum annual guaranteed level of combined savings and improved performance approach to the project. If the project does not generate the guaranteed level of savings in any given year, the CONTRACTOR will be responsible for reimbursing The County the amount of the shortfall necessary to pay for annual project financing and all related contract obligations. Excess savings will not be used to reimburse the CONTRACTOR for any payments made due to shortfalls in other years.

In the above Section 2.2.7 of Serial 08066 RFP as amended on June 23, 2008, Maricopa County would accept proposals for “shared savings plan in conjunction with a guaranteed savings plan”. While APS Energy Services has the knowledge and financial capacity to administer such a contractual relationship, we do not believe it is in the best interest of the County. We would prefer to discuss the pros and cons of this deal structure at the appropriate time. NO shared savings.

- 2.2.9 Financial Review:

Detailed financial projections of project benefits are dependent upon the scope of technical retrofits finally selected and installed. It is premature to place a major emphasis on projected financial benefits prior to the completion of a detailed engineering study and negotiation of the project structure.

The County reserves the right to compare the Contractors’ financial costs to its own obtainable funding. The CONTRACTOR will be notified as to what financial approach is in the best interest of the County.

APS Energy Services will comply with the Financial Review requirement as stated above in 2.2.9.

- 2.2.10 O&M savings:

Any O&M cost savings related to the facilities will be rigorously reviewed and, if agreed to, will be limited to those that can be thoroughly documented and approved by the County. Contractors should be prepared to develop projects based solely on energy and water savings.

APS Energy Services will comply with the O&M Savings requirement as stated above in 2.2.10.

- 2.2.11 Anticipated Performance

The minimum conditions the County will accept from the selected CONTRACTOR are described below. This section defines the scope of services related to the technical requirements that will be included in any final performance contract. Also see Exhibit C for an example of an anticipated energy savings contract. It also defines the key contractual provisions. A performance contract will not be negotiated until successful

completion of a technical financial grade audit (also referred to as the “in-depth feasibility study” by A.R.S. section 15-213.01(E)).

The Scope of Services must be included in any performance contract the County enters into, and must include the following items at a minimum:

APS Energy Services will comply with the Anticipated Performance requirement as stated above in 2.2.11.

- 2.2.12 Standards of Comfort. Specific standards of comfort, safety and functionality will not be degraded from the existing condition and/or shall meet minimum established industry standards or county policies. The CONTRACTOR will be responsible for maintaining the levels of comfort for each building as specified in the RFP or in any final agreement. Persistent failure to maintain the defined climate and lighting conditions will constitute a default.

APS Energy Services will comply with the Standards of Comfort requirement as stated above in 2.2.12.

- 2.2.13 Professional Engineer Involvement. A registered professional engineer must, at a minimum, review and approve design work done under this contract.

APS Energy Services will comply with the Professional Engineer Involvement requirement as stated above in 2.2.13.

- 2.2.14 Construction Management. The CONTRACTOR will be required to work with current building management and maintenance personnel in order to coordinate construction and provide appropriate training in operations and maintenance of all installed improvements. No equipment or other improvements will be installed that would require the County to hire additional personnel unless contract negotiations produce an explicit exemption for a specific installation. Maintenance responsibilities shall be proposed in detail in the contract.

APS Energy Services will comply with the Construction Management requirement as stated above in 2.2.14.

- 2.2.15 Equipment Standardization. All equipment installed that is comparable to similar equipment at other campus buildings shall be of the same manufacturer for standardization of equipment, unless accepted by the County.

APS Energy Services will comply with the Equipment Standardization requirement as stated above in 2.2.15.

- 2.2.16 Maintenance Manuals. At least three (3) maintenance manuals for each site will be provided for all equipment replacements and/or upgrades at each location. Manuals are subject to approval of the County.

APS Energy Services will comply with the Maintenance Manuals requirement as stated above in 2.2.16.

- 2.2.17 As-Built Drawings. Where applicable, CONTRACTOR must provide Mylar, reproducible "as built" and record drawings in an electronic format approved by the County of all existing and modified conditions associated with the project, conforming to typical engineering standards. These should include architectural, mechanical, electrical, structural, and control drawings and operating manuals within 30 days of completion of installation. These are to be maintained in an electronic format (AUTOCAD). The final submission of documents must be completed, prior to final payment.

APS Energy Services will comply with the As-Built Drawings requirement as stated above in 2.2.17.

- 2.2.18 Follow-up Monitoring and Maintenance Services. Following the installation and implementation of improvements the CONTRACTOR will be responsible for maintaining and monitoring the measures to ensure optimal performance throughout the contract period.

APS Energy Services will comply with the Follow-up Monitoring and Maintenance Services requirement as stated above in 2.2.18.

- 2.2.19 The County Activities. The County reserves the right to make energy improvements to the work sites and to monitor the performance of the installations independently of the CONTRACTOR. Additionally, the County may wish to integrate other identified capital needs with CONTRACTOR projects, which may or may not contain energy saving opportunities.

APS Energy Services will comply with the County Activities requirement as stated above in 2.2.19.

- 2.2.20 Meeting Project Schedule. The CONTRACTOR must provide a final schedule of project milestones including equipment-servicing and preventive maintenance provisions that will become part of any final contract. The CONTRACTOR is responsible for meeting schedule deadlines. In the event any milestone or service provision is not met as scheduled without prior approval from the County, the County reserves the right to consider it a default and withdraw from all contractual obligations without penalty.

APS Energy Services will comply with the Meeting Project Schedule requirement as stated above in 2.2.20.

- 2.2.21 County Inspection. The County must have the right to inspect, test and approve the work conducted in the facilities during construction and operation. The County retains the right to have its representative visit the site during the audit and implementation phases of the project, and to attend relevant on-site or off-site meetings of the CONTRACTOR and/or its sub-Contractors'.

APS Energy Services will comply with the County Inspection requirement as stated above in 2.2.21.

- 2.2.22 Final Approval of the County. The County retains final approval over the scope of work and all end-use conditions. The County may delay the initiation of savings payments until approved. **This shall be part of the negotiations of the Energy Savings Contract.**

APS Energy Services will comply with the Final Approval requirement as stated above in 2.2.22.

- 2.2.23 Property of Drawings, Reports and Materials. All drawings, reports and materials prepared by the CONTRACTOR specifically in performance of this contract shall become the property of the County and will be delivered to the County as needed or upon completion of construction.

APS Energy Services will comply with the Property of Drawings, Reports and Materials requirement as stated above in 2.2.23.

- 2.2.24 Compliance. All work completed under a contract must be in compliance with all applicable federal, state and local laws, rules and regulations such as building codes and appropriate accreditation, certification and licensing standards. Work must be in accordance with sound engineering and safety practices and in compliance with all the County regulations relative to the premises. The CONTRACTOR and its subcontractors

will be responsible for obtaining any and all required governmental permits, consents and authorizations and for payment of any and all state, County and city required taxes and fees which result from this contract. Maricopa County submit for all construction related permits from Maricopa County Planning & Development Department for permitting issues, however, we are required to also seek City approval for work that impact fire and road access.

APS Energy Services will comply with all applicable Federal, State and Local laws, rules and regulations as stated above in 2.2.24.

- 2.2.25 Handling of Hazardous Materials. All work completed under a contract must be in compliance with all applicable federal, state and local laws, rules and regulations regarding waste disposal and treatment/disposal of any hazardous materials that could result from this project. Work must also be in accordance with sound engineering and safety practices, and in compliance with all reasonable County rules relative to the premises. In the event the CONTRACTOR encounters any such materials, the CONTRACTOR shall immediately notify the project manager and stop work pending further direction from the project manager. The County may, in its sole discretion, suspend work on the project pending removal of such materials or terminate this Agreement.

APS Energy Services will comply with the Handling of Hazardous Materials requirement as stated above in 2.2.25.

- 2.2.26 Methodology to Adjust for Changes. The contract must contain a mutually acceptable clause whereby unanticipated changes in facility use, occupancy, schedule and/or utility rates can be accommodated in a fair manner agreeable to both parties. The Contractor's proposed method for adjusting the energy use baseline should be identified in the RFP response and listed in a schedule to the contract.

APS Energy Services will comply with the Methodology to Adjust for Changes requirement as stated above in 2.2.26.

- 2.2.27 Sub-CONTRACTOR Approval. The County retains the right to approve any CONTRACTOR selected sub- CONTRACTOR prior to its commencement of work on this project. Names and qualifications must be submitted at least two weeks in advance.

APS Energy Services will comply with the Sub-CONTRACTOR Approval requirement as stated above in 2.2.27.

- 2.2.28 CONTRACTOR Insurance. Prior to the commencement of work, the CONTRACTOR must provide evidence of insurance for both the construction and operations phases of the project.

APS Energy Services will comply with the CONTRACTOR Insurance requirement as stated above in 2.2.28.

- 2.2.29 Guaranteed Cost Savings. Improvements and services must result in guaranteed minimum annual energy, water and O&M savings option, as well as guaranteed minimum levels of occupant comfort and operations and maintenance and/or any ancillary services. A guarantee is required to equal the calculated savings attributable to all energy saving measures for each year during the contract period. The combined savings achieved by the installed projects must be sufficient to cover all project costs including debt service and CONTRACTOR fees maintenance, monitoring and other services, for the duration of the contract term. Payments must be linked to actual measured postretrofit improvements as compared to building performance before the installation of any energy systems and service improvements. Annual cost savings derived from such improvements beyond the guaranteed minimum savings will be held by the County, and will not be allocated to shortfalls in other years. (See 2.2.9 Guarantee)

APS Energy Services will comply with the Guaranteed Cost Savings requirement as stated above in 2.2.29.

- 2.2.30 Applicability of O&M savings. Any O&M cost savings related to maintenance and operation of the facilities will be rigorously reviewed and, if agreed to, will be limited to those that can be thoroughly documented and approved by the County.

APS Energy Services will comply with the Applicability of O&M Savings requirement as stated above in 2.2.30.

- 2.2.31 Annual Reconciliation. Annual savings will be verified at a specified time each year in order to determine if the Contractors guarantee needs to be exercised.

APS Energy Services will comply with the Annual Reconciliation requirement as stated above in 2.2.31.

- 2.2.32 Contract Term. The pay back period of this contract shall not exceed 25 years in duration.

APS Energy Services will comply with the Contract Term as stated above in 2.2.32.

- 2.2.33 Pre-Payment Non-Penalty. The contract must permit the County to prepay the CONTRACTOR, in part or in whole, without penalty.

APS Energy Services will comply with the Pre-Payment Non -Penalty requirement as stated above in 2.2.33.

- 2.2.34 Contract Re-negotiation. The County reserves the right to renegotiate the awarded contract if warranted, due to changes in the regulatory or utility climates or in the County's use of energy and/or the desire to add sites not included in the initial contract.

APS Energy Services will comply with the Contract Re-negotiation requirement as stated above in 2.2.34.

- 2.2.35 Post-Contract Preventive Maintenance Schedule. Upon completion of the contract, the CONTRACTOR shall provide to the County a single comprehensive schedule of necessary preventive maintenance for all installations for the five (5) years following contract closeout.

APS Energy Services will comply with the Post-Contract Preventive Maintenance Schedule requirement as stated above in 2.2.35.

2.3 SERVICE TERMS AND CONDITIONS

- 2.3.1 All service work performed by CONTRACTOR shall be to a professional standard, performed in a neat and workmanship manner, meeting all required municipal building codes, and susceptible to County staff inspection and approval. Documentation, through an audit and feedback system of contract administration shall be used in this contract by the County departments.

APS Energy Services will comply with the Service Terms and Conditions as stated above in 2.3.1.

- 2.3.2 Permits required by County and/or local municipal authorities shall be obtained by the CONTRACTOR for all work. Cost shall be paid by the CONTRACTOR and invoiced to the County without mark-up. Copies of all fee statements must be attached to the Contractor's invoice.

APS Energy Services will comply with the Permits requirement as stated above in 2.3.2.

- 2.3.3 The CONTRACTOR shall perform the work in a way to minimize disruption to the normal operation of building tenants. Upon completion of work the CONTRACTOR is responsible for cleaning and removing from the job site all debris, materials, and equipment associated with the work performed.

APS Energy Services will comply with the Service Terms and Conditions as stated above in 2.3.3.

- 2.3.4 The CONTRACTOR shall make necessary installation and repairs to install energy efficient equipment in such a manner that does not damage County property. In the event damage occurs to the County property, or any adjacent property by reason of any repairs or installations performed under this Contract, the CONTRACTOR shall replace or repair the same at no cost to the County. If damage caused by the CONTRACTOR has to be repaired or replaced by the County, the cost of such work shall be deducted from the monies due the CONTRACTOR.

APS Energy Services will comply with the Service Terms and Conditions as stated above in 2.3.4.

- 2.3.5 A Maricopa County Sheriff's Office, Superior Court and/or a County Attorney's background checks will be a requirement for all employees of Contractors staff providing services to the County. This requirement is essential due to the need to access areas within the County such as detention facilities, court buildings, and many other restricted areas. The cost for this requirement shall be incurred by the County. It may take up to two weeks to obtain clearance for eligible employees.

APS Energy Services will comply with the Service Terms and Conditions as stated above in 2.3.5.

- 2.3.6 Technical Training To County Staff

The CONTRACTOR shall be required to provide technical expertise training for newly installed equipment. The training requested may be for operations and preventive maintenance of energy efficient equipments. The training will be held at a County facility, or if deemed necessary, the Contractors facility. Training aids (i.e., service manuals, mock-up equipment; etc.) shall be provided by the CONTRACTOR. Maintenance and repair manuals for the equipment shall be provided by the CONTRACTOR. The CONTRACTOR shall be given advance notice to prepare, research, and schedule staff in order to provide an adequate training presentation.

APS Energy Services will comply with the Technical Training to County Staff requirement as stated above in 2.3.6.

- 2.3.7 Employees Of The CONTRACTOR

No one except authorized employees of the CONTRACTOR is allowed on the premises of Maricopa County Buildings. Contractor's employees are NOT to be accompanied in their work area by acquaintances, family members, assistants, or any other person unless said person is an authorized employee of the CONTRACTOR.

APS Energy Services will comply with the Employees of the CONTRACTOR requirement as stated above in 2.3.7.

2.4 TECHNICAL AND DESCRIPTIVE LITERATURE

Proposer(s) must include complete manufacturer's technical and descriptive literature regarding the material they propose to provide. Literature shall be sufficient in detail in order to allow full

and fair evaluation of the offer submitted. Failure to include this information may result in the bid being rejected.

APS Energy Services will comply with the Technical and Descriptive Literature requirement as stated above in 2.4.

2.5 CONTRACTOR RESPONSIBILITY:

The Contractor will be responsible for any damages whatsoever to County property as applicable when such property is the responsibility or in the custody of the Contractor, his Employees or Subcontractors.

Contractor agrees that all Subcontractors performing work under this Contract shall comply with its provisions and it is expressly understood that all persons employed by the Contractor, either directly or indirectly, shall be considered employees of the Contractor, and not employees of Maricopa County.

Contractor acknowledges and agrees that it is liable and responsible for any act or omission by the Contractor, its employees, agents, officers, representatives, and subcontractors occurring in the course of Contractor's performance of this Contract, whether such act or omission occurs on County property or elsewhere. Contractor shall be liable for any loss or damage arising out of or related to Contractor's performance of this contract, Contractor shall bear the above stated liability, even in absence of its own negligence, unless County actions caused the loss or damage (i.e., if regulation, but damage occurs, Contractor is responsible for such damages.) Contractor shall bear the above stated liability, consequential, incidental, direct, and indirect damages, and shall be liable for all costs, including attorney's fees, incurred by the County to enforce this provision.

APS Energy Services will comply with the Contractor Responsibility requirement as stated above in 2.5.

EXHIBIT B-1

Downtown Campus	Sq. Ft.
4137 (&57) Security Center Building	273,528
3320 Forensic Science Center	85,758
3846 Public Health Clinic	109,962
6202 (&05) MCSO Wrhse. & Elections	92,348
3401 Old Courthouse	82,529
3311 Electric to break out	N/A
3317 Electric to breakout	N/A
3817 &18 Garfield Adult Probation	19,284
4051 Healthcare for the Homeless	17,820
4042 Motor for Parking Lot Gate	N/A
Shared Accounts for following Buildings	-
3310 Administration Building	323,900
3311A FMD Offices	75,070
3301 West Courts Building	167,323
3307 Food Court	14,947
3306 Courts Complex Cooling Towers	7,598
3305 Central Courts Building	276,866
3304 Supervisor's Auditorium	5,208
3311P FMD Parking Garage	60,056
3303 East Courts Building	178,356
3317A Star Call Center Addition 17%	15,917
3317P Forensic Parking 83%	79,374
4016 Office Shelter for the Homeless	20,250
4039 Justice Courts & Court Admin	25,000
6205 Elections	15,000
Totals	1,946,094

Downtown Jails	Sq. Ft.
Shared Accounts for following Buildings	-
3316 Fourth Ave Jail	751,248
3302 Sheriff Admin. & Old Main Jail	233,412
4053 Downtown Justice Center	233,000
4052 Chambers Building	68,976
3315P Jackson St Garage	115,501
Shared Accounts for following Buildings	-
3315 Electric to break out	N/A
3315A & 3321 Clerk of Court	153,599
Totals	1,555,736

Durango Campus	Sq. Ft.
Shared Accounts for following Buildings	-
1706 Juvenile Detention Building	138,970
1501 Equip Services/Admin Bldg/Shop	77,318
1401 MCDOT Administration Building	71,520
1801 Animal Control Office & Lab	17,928
1408 MCDOT Distribution Center	39,862
1965-1967 Residential Treatment Cntr	40,425
1409 MCDOT Traffic Operations	38,213
1913-1922 MCSO Support	81,766
1715 Durango Juvenile Court	135,628
1511 Communications Building	10,434
1414 FMD O&M Warehouse	28,555
1415 Parks & Rec Bldg	8,000
1506 Service Station	2,985
1404 Flood Control Operations	14,619
1704 Juvenile Main Admin	20,670
1405 MCDOT Operations	20,135
1705 Juvenile Reception	15,943
1703 Juvenile Intake	14,325
1702 Juvenile Probation Admin	14,494
1701 Juvenile Round Court Bldg	25,298
1410 Chiller Equipment Room	3,604
1402 Flood Control Office Building	73,688
1417 Animal Care and Control	N/A
1406 Protective Services Commnd Cntr	370
0306closed 03/2000 Av. Service Cntr.	N/A
1901 Former Durango FMD Warehouse	39,107
1513 Durango Parking Garage	86,509
-	-
1907 Former Durango HVAC Shop	2,600
4136 Flood Control N Phoenix Yard	4,015
1806 Animal Control Fields Ops	2,160
1910 Vehicle Processing Center	7,680
1712 Juvenile 80 Bed Addition	35,990
1714 Juvenile Detention Admin.	26,582
1713 Durango Juvenile Detention	166,205
-	-
1916 Durango Court Records	15,623
4166 Black Canyon Hwy Bldg	30,008

Southeast Campus	Sq. Ft.
2856 SE Juvenile Facility	172,354
2855 SE Regional Court	178,490
3853 Northeast Consolidated Courts	104,295
2871 SE Juvenile DetentionExpansion	105,332
2814 Mesa Day Reporting Center	26,685
5105 Eastside Veterinary Center	38,869
2853 SE Sheriff's Substation	43,034
3801-3804 Emergency Services	11,616
4608 Scottsdale and NW Justice Court	13,276
2860 SE Juvenile Parking Garage	34,165
2801 West Mesa Justice Court	8,560
2852 SE Equipment Service Center	3,450
4602 N. Scottsdale Assessor Office	9,245
3933 Southport Probation Office	5,240
5126 Assessor Tempe / Chandler	10,768
2818 East Mesa Flood Control Yard	2,625
Following Buildings were added after FY 2007	-
-	-
1216 San Tan Justice Courts	52,000
2874 Warehouse	0
2875 Warehouse	N/A
Totals	820,004

Durango Campus (continued)	Sq. Ft.
2033 NW Consolidated Justice Courts	35,271
2029 NW Regional Center	24,890
4121 MCSO Computer Center	40,830
2021 Surprise Sheriff Substation	19,608
2310 Glendale Adult Probation Center	44,846
0309 Avondale Sheriff Substation	21,451
2025 NW Maintenance Facility	7,363
2201 Gila Bend Sheriff Substation	15,855
0406 Buckeye MCDOT	7,969
4148 Animal Control & Adoption	8,133
Totals	1,537,445

Lower Buckeye Jail	Sq. Ft.
Shared Accounts for following Buildings	-
1964 LBJ Central Plant	98,344
1962 LBJ Food Factory & Central Serv	221,292
1963 LBJ Sheriff's Laundry	21,699
1951 Sheriff's Training Academy	77,390
1961 LBJ Detention Facility	871,308
1952 Property & Evidence	9,816
Totals	1,299,849

Durango Jails	Sq. Ft.
Shared Accounts for following Buildings	-
1601 09, 20, 21, 25 Durango Jail	298,119
1403, 1411, 1412 Estrella Jail	290,427
1611 1619, 1622 1624 Towers Jail	188,862
Totals	777,408

Downtown Campus	Sq. Ft.
4137 (&57) Security Center Building	273,528
3320 Forensic Science Center	57,172
3846 Public Health Clinic	124,940
6202 Materials Mgt & Elections	93,240
3401 Old Courthouse	82,529
3817 &18 Garfield Adult Probation	19,284
4102 Homeless Outreach Center	6,400
4050 C.A.S.S.	79,082

09/05/08

09/05/08

Durango Campus	Sq. Ft.		
1706 Juvenile Detention Building	72,259		
1501 Equip Services/Admin Bldg/Shop	77,318		
1401 MCDOT Administration Building	71,520		
1801 Animal Control Office & Lab	0	-17,928	09/05/08
1408 MCDOT Distribution Center	39,677		
1965-1967 Residential Treatment Cntr	28,456		
1409 MCDOT Traffic Operations	38,213		
1913-1922 MCSO Support	63,811		

Day Resource Center	23,792
Nova Safe Haven	12,816
4051 Healthcare for the Homeless	17,820
3310 Administration Building	323,900
3311 FMD	375,351
3301 West Courts Building	167,323
3307 Food Court	22,022
3306 Courts Complex Cooling Towers	7,598
3305 Central Courts Building	276,866
3304 Supervisor's Auditorium	5,208
3303 East Courts Building	193,303
3317 Forensic Parking Garage	396,870
3325 New Court Tower	660,000
4016 Office Shelter for the Homeless	20,250
4039 Justice Courts & Court Admin	25,000
6205 Elections	50,840
Revised Totals	3,315,134

Downtown Jails	Sq. Ft.
3309 Madison St. Jail	397,984
3316 Fourth Ave Jail	577,883
3302 Sheriff Admin. & Old Main Jail	0
4053 Downtown Justice Center	253,172
4052 Chambers Building	90,737
3315P Jackson St Garage	624,357
3315A Clerk of Courts	96,857
3321 Santa Fe Train Depot	15,000
Totals	2,055,990

Southeast Campus	Sq. Ft.
2856 SE Juvenile Facility	134,849
2855 SE Regional Court	178,490
3853 Northeast Consolidated Courts	104,295

09/05/08	1715 Durango Juvenile Court	125,367		
09/05/08	1511 Communications Building	10,434		
	1414 FMD O&M Warehouse	28,555		
	1415 Parks & Rec Bldg	8,000		
	1506 Service Station	2,985		
	1404 Flood Control Operations	14,619		
	1704 Juvenile Main Admin	15,900		
	1405 MCDOT Operations	20,135		
	1705 Juvenile Reception	12,775		
	1703 Juvenile Intake	11,019		
	1702 Juvenile Probation Admin	14,494		
	1701 Juvenile Round Court Bldg	25,298		
09/05/08	1410 Chiller Equipment Room	901		
	1402 Flood Control Office Building	73,688		
	1417 Animal Care and Control	68,542		09/05/08
	1406 Protective Services Commnd Cntr	247		
	1901 Former Durango FMD Warehouse	40,100		
	1513 Durango Parking Garage	375,000		
	1907 Former Durango HVAC Shop	0	-2,600	09/12/08
	4136 Flood Control--N Phoenix Yard	4,000		
	1806 Animal Control Fields Ops	0		09/05/08
09/12/08	1910 Vehicle Processing Center	7,680		
	1712 Juvenile 80-Bed Addition	27,685		
	1714 Juvenile Detention Admin.	26,582		
	1713 Durango Juvenile Detention	120,862		
	1916 Durango Court Records	15,491		
	4166 Black Canyon Hwy Bldg	30,008		
	2033 NW Consolidated Justice Courts	36,976		
	2029 NW Regional Center	24,890		
	4121 MCSO Computer Center	6,805		
	2021 Surprise--Sheriff Substation	13,072		
	2310 Glendale Adult Probation Center	44,846		
	0309 Avondale Sheriff Substation	13,365		

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2871 SE Juvenile DetentionExpansion	81,025
2814 Mesa Day Reporting Center	26,685
5105 Eastside Veterinary Center	25,913
2853 SE Sheriff's Substation	28,689
3801-3804 Emergency Services	13,360
4608 Scottsdale and NW Justice Court	13,276
2860 SE Juvenile Parking Garage	170,824
2801 West Mesa Justice Court	8,560
2852 SE Equipment Service Center	3,450
4602 N. Scottsdale Assessor Office	9,245
3933 Southport Probation Office	5,240
2818 East Mesa Flood Control Yard	2,625
1216 San Tan Justice Courts	52,000
Totals	858,526

2025 NW Maintenance Facility	7,363		
2201 Gila Bend Sheriff Substation	10,629		
0406 Buckeye--MCDOT	7,969		
Totals	1,637,536		

Lower Buckeye Jail	Sq. Ft.		
1964 LBJ Central Plant	24,586		
1962 LBJ Food Factory & Central Serv	147,528		
1963 LBJ Sheriff's Laundry	14,466		
1951 Sheriff's Training Academy	72,600		
1961 LBJ Detention Facility	670,237		
1952 Property & Evidence	60,342		
Totals	989,759		

Total Square Footage 9,443,568
Price @ \$.072 sf \$679,936.90

Durango Jails	Sq. Ft.		
1601-09, 20, 21, 25 Durango Jail	229,322		
1403, 1411, 1412 Estrella Jail	213,422		
1611-1619, 1622-1624 Towers Jail	143,879		
Totals	586,623		

EXHIBIT C
DESIGN AND CONSTRUCTION AGREEMENT

BETWEEN
APS ENERGY SERVICES COMPANY, INC.
AND

EFFECTIVE AS OF _____, 2008

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(To be completed)

This Design and Construction Agreement (the “**Agreement**”) is made and entered into as of the ____ day of _____, 2008, by and between _____, a _____ (the “**Owner**”) and APS Energy Services Company, Inc., an Arizona corporation (“**APS Energy Services**” or “**Design/Builder**”).

1.0 RECITALS:

- 1.1 The Owner desires to reduce the energy consumption and associated operating costs and has agreed to implement the energy conservation measures, more fully described in the Energy Audit Report, attached hereto and incorporated herein as Exhibit A (the “**Energy Audit**”).
- 1.2 The Owner desires to retain APS Energy Services to design, engineer and construct the energy conservation measures (the “**Work**”) at the Owner’s facilities, located at _____ and further described in the Energy Audit (the “**Site**”).
- 1.3 APS Energy Services has agreed to design, engineer and construct the Work at the Site.

NOW, THEREFORE, in consideration of the following mutual covenants and agreements, the parties hereto agree as follows:

2.0 DESIGN, ENGINEERING, CONSTRUCTION AND INSTALLATION OF THE FACILITY.

- 2.1 Commencing upon execution of this Agreement, APS Energy Services will design, construct, and install the Work at the Site, in accordance with Exhibit A, and the terms and conditions set forth below, subject to Force Majeure (as hereinafter provided in Section ____ of this Agreement), at the total fixed price of \$ _____ (the “Contract Amount”). The fixed price amount stated herein contains an amount of \$ _____ for taxes, which is based on a current tax rate of

____%. In the event there is either an upward or downward adjustment in the tax rate after the execution date of this Agreement, the fixed price amount of the Agreement shall be adjusted to reflect the actual taxes paid in connection with the Work performed under this Agreement.

- 2.2 Attached as Exhibit B is the overall schedule for the Work that sets forth the timetable for its completion. Exhibit B may not be altered or modified by either party in any material respect without the parties' prior mutual agreement in writing, except for alterations or modifications necessitated by Force Majeure.

3.0 **COMMENCEMENT AND COMPLETION OF THE WORK.**

- 3.1 The Work shall commence upon receipt of a written Notice to Proceed from the Owner and shall be completed no later than _____ calendar days thereafter, subject to the terms and conditions of this Agreement

4.0 **OWNERSHIP AND USE OF THE DESIGN DOCUMENTS.**

- 4.1 Without exception, all design documents, plans, drawings, specifications, notes, reports, renderings, final models, design concepts and images, and all other documents, records, items and electronic data (the "Information-Records") prepared and furnished by APS Energy Services pursuant to this Agreement and which were specifically developed for the Site with the Owner's funds, shall be the property of the Owner. APS Energy Services shall maintain file copies of such Information-Records as required by law and the standards of professional practice.
- 4.2 Information-Records prepared and furnished by APS Energy Services pursuant to Section 3(a) of this Agreement are project-specific to the Work to be performed under this Agreement. If Owner's re-uses the Information-Records for purposes other than directly related to the Work performed under this Agreement, it does so at its own risk. In such event, the name and seal of APS Energy Services' design professionals shall be removed, and APS Energy Services or its design professionals shall not be liable to the Owner or third parties in their re-use. The Owner agrees to add APS Energy Services and its design professionals as additional insured entities pursuant to the Owner's insurance program for this sole purpose. Upon request, Owner shall provide APS Energy Services with a certificate of insurance substantiating compliance with the foregoing sentence.
- 4.3 By execution of this Agreement, APS Energy Services assigns all copyright ownership and other intellectual property interest in the Information-Records to the Owner and further agrees to execute such separate assignment agreement or other instrument reasonably necessary to implement such assignment.
- 4.4 The Owner grants APS Energy Services and its design professionals a royalty-free, non-exclusive, unlimited and worldwide license to use standards, conventions, and details relating to the Site in any other single project, which shall not in the aggregate result in the use of the entire design or a major part of the entire design.

5.0 **APS ENERGY SERVICES' RESPONSIBILITY.**

- 5.1 Notwithstanding any other provisions of this Agreement, APS Energy Services shall at all times perform its obligations under this Agreement in a manner consistent with prudent industry and design practices. APS Energy Services shall employ only subcontractors and design professionals who are duly licensed and qualified to perform the Work as contemplated by this Agreement, and shall be responsible to the Owner for acts and omissions of APS Energy Services' employees,

subcontractors and their agents and employees, and other persons, including the design professionals, performing any portion of the Work pursuant to this Agreement.

- 5.2 APS Energy Services shall provide to the Owner prior to the commencement of the Work a Payment and Performance Bond in the full amount of the Work, issued by a surety reasonably acceptable to the Owner "in conformance with ARS 34-222". Upon completion of the Work and the submission to the Owner of evidence that all subcontractors and material suppliers having performed work or having supplied material have been paid for such services or materials, the Owner shall release the Payment and Performance Bond.
- 5.3 APS Energy Services shall appoint one or more representatives ("**APS Energy Services' Representative(s)**") who shall have the authority to act on behalf of APS Energy Services in respect to all matters pertaining to this Agreement. APS Energy Services' Representative(s) may be replaced from time to time by APS Energy Services, with written notice of such replacement to the Owner. The initial APS Energy Services Representative shall be:

Name:
Title:
Address:

Telephone:
Cell Phone:
Fax:
Email:

The Owner shall communicate only with APS Energy Services regarding the performance of the Work, and shall not communicate directly with APS Energy Services' employees, agents, subcontractors or others retained to perform any part of the Work, unless otherwise specifically directed by APS Energy Services' Representative(s). Owner shall be responsible for added costs or schedule delays resulting in whole or in part from its failure to comply with the foregoing sentence.

- 5.4 APS Energy Services shall be responsible for all construction means, methods, techniques, construction sequencing and procedures, and for the coordination of all portions of the Work. Prior to the commencement of any construction, APS Energy Services shall secure all required permits pertaining to the Work and shall coordinate with the permit-issuing agency in order to assure that inspections are performed in accordance with the permit requirements.
- 5.5 APS Energy Services shall periodically inform the Owner's Representative of the progress of the Work, and shall be responsible for correction of all Work that does not conform to the requirements set forth in Exhibits A and B to this Agreement. Along with the monthly Application for Payment, APS Energy Services shall provide a monthly progress report which shall include a description of the Work performed during the preceding month and Work contemplated for the upcoming month, cash flow projections for the upcoming month, and schedule updates.
- 5.6 APS Energy Services shall submit design documents to the Owner's Representative for the Owner's information at 60% and 95% completion levels and shall obtain the Owner's approval prior to commencing with the construction. Prior to the submittal of the sixty percent (60%) and ninety-five percent (95%) design plans, APS Energy Services shall advise the Owner in writing of critical design issues. The Owner shall bear all costs associated with delays or changes to the schedule resulting from review delays and changes to the design documents or performance of the

Work requested by or on behalf of the Owner, excepting changes in the Work resulting from APS Energy Services' failure to comply with the requirements of this Agreement,

- 5.7 Although under Section ____ of this Agreement, APS Energy Services shall charge Owner_____, APS Energy Services shall be responsible for the actual payment of all sales, consumer, use and similar taxes collected from Owner on the Work performed under this Agreement.
- 5.8 APS Energy Services shall obtain and pay for all building and other permits and governmental fees, licenses, and inspections required for the proper performance of the Work, as contemplated by this Agreement, and which are either customarily secured after execution of a contract for construction or are legally required on the date of this Agreement.
- 5.9 APS Energy Services shall comply with all applicable laws, ordinances, rules, regulations and lawful orders of public authorities having jurisdiction of the Work.
- 5.10 APS Energy Services shall keep the Site free from accumulation of waste materials during the performance of the Work, and shall, after the completion of the Work, remove all waste materials, tools, equipment, and surplus materials from the Site.
- 5.11 APS Energy Services shall maintain one (1) record copy of drawings, specifications, product samples, shop drawings, change orders, if any, and other related documents at the Site, and shall regularly update the shop drawings to reflect the Work. The Owner shall have the right at anytime upon reasonable advance notice to review and inspect such records. Upon completion of the Work and prior to final payment, such records shall be delivered to the Owner.
- 5.12 APS Energy Services shall notify the Owner when the Work is substantially complete or when the Facility can be utilized fully or partially for its intended use, and if the Owner concurs, the Owner shall sign a certificate confirming substantial completion (the "**Certificate of Substantial Completion**"), which shall establish the date on which the Work is substantially complete, and shall describe each party's subsequent responsibilities in connection with security, insurance, maintenance, and damage to the Work performed. The Certificate of Substantial Completion shall also include a list of items ("**Punch List**"), which require completion or correction. The warranty for material and workmanship shall commence on the date the Certificate of Substantial Completion is issued for the Work. APS Energy Services shall provide a copy of all commissioning documents to the Owner.
- 5.13 APS Energy Services shall submit an outline for a formal commissioning program to Owner's Representative for review and approval in accordance with the timing provided for in Section 2(a) of this Agreement and Exhibit B.

6.0 OWNER'S RESPONSIBILITY

- 6.1 Owner shall grant APS Energy Services (including its employees, agents and subcontractors of any tier), ingress and egress to and from the Site from time to time as reasonably required for the purpose of design, engineering, constructing, installing, monitoring, and servicing the Work contemplated under this Agreement.
- 6.2 Owner shall appoint one or more representatives ("**Owner's Representative(s)**") who shall have the authority to act on behalf of the Owner in respect to all matters pertaining to this Agreement. The Owner's Representative(s) may be replaced from time to time by the Owner with written notice of such replacement to APS Energy Services. The initial Owner's Representative shall be:

Name:
Title:
Address:

Telephone:
Cell Phone:
Fax:
Email:

- 6.3 Owner shall cooperate with APS Energy Services in the performance of all stages of the Work, including, without limitation, securing all required permits, licenses, and necessary inspections for the performance of the Work.
- 6.4 Owner shall disclose to APS Energy Services results of geotechnical investigations, inspections and investigations performed at the Site prior to commencement of the Work, pertaining to mechanical, structural, sub-surface and environmental conditions at the Site. Owner acknowledges that APS Energy Services will rely on the correctness and completeness of such information, unless Owner expressly advises APS Energy Services to the contrary.
- 6.5 Owner shall make payments promptly to APS Energy Services in accordance with the terms and conditions of Section 8 of this Agreement.

7.0 SITE SAFETY AND PROTECTION OF PERSONS AND PROPERTY.

- 7.1 APS Energy Services shall be responsible for implementing, coordinating and maintaining all safety programs in connection with the performance the Work.
- 7.2 APS Energy Services shall take reasonable precautions for the safety of and shall provide reasonable protection to prevent damage, injury or loss to (i) APS Energy Services' personnel as well as those of subcontractors of any tier or any other persons affected by the Work or at or near the Site; (ii) completed Work and material and equipment to be incorporated into the Work, whether such material or equipment is stored off or on the Site under care, custody or control of APS Energy Services, its subcontractors or material suppliers; and (iii) other property at or adjacent to the Site, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement.
- 7.3 The Owner, the Owner's Representative(s), their employees and visitors brought to the Site shall adhere to all of APS Energy Services' Site safety rules while on or near the Site. Visitors or other employees of the Owner shall be accompanied by the Owner's Representative(s) at all times while at or near the Site, and APS Energy Services Representative(s) shall receive advance notice of such visits. The Owner shall indemnify, defend and hold APS Energy Services, its agents, employees, representatives, and subcontractors of any tier, harmless from and against all damages and claims for injury, death, or property damage resulting from the failure of the Owner, the Owner's Representative(s), the Owner's employees or visitors to adhere to APS Energy Services' Site safety rules.

8.0 HAZARDOUS MATERIAL.

- 8.1 Neither APS Energy Services nor its subcontractors of any tier shall be responsible for the removal and disposal of hazardous material or regulated substances, such as asbestos, found at the Site. In the event that such materials are discovered or suspected to be present at the Site by either APS Energy Services or its subcontractors, Work shall cease immediately and APS Energy

Services will notify the Owner. The Owner shall then arrange for the identification and remediation of such material through qualified, independent contractor(s) and shall pay for such identification and remediation with separate funds.

- 8.2 Prior to commencement of the Work, Owner shall identify all substances at the Site, which may be harmful to APS Energy Services' personnel or to the personnel of its subcontractors of any tier. Such substances shall include but not be limited to asbestos, mold, and polychlorinated biphenyl ("PCP").
- 8.3 If reasonable precautions will be inadequate to prevent bodily injury or death to persons resulting from a material or substance encountered at the Site by APS Energy Services, APS Energy Services shall upon recognizing the condition, immediately stop Work in the affected area and report said condition to the Owner in writing. When the material and substance has been rendered harmless by Owner, Work in the affected area shall resume upon written Agreement between the Owner and APS Energy Services. The Owner will then be responsible proper removal and disposal of the hazardous material or substance discovered on the Owner's property during the course of the Work. The schedule for completion of the Work shall be extended for no less than the duration of the delay, and the total cost for the Work shall be increased by an amount equaling APS Energy Services' reasonable cost of shutdown, delay, and start-up through the issuance of a Change Order to this Agreement.
- 8.4 Owner shall indemnify and hold harmless APS Energy Services, its employees, agents and subcontractors or any of them from and against claims, damages, losses and expenses, or property damage or loss, including but not limited to reasonable attorneys fees, arising out of or resulting from Owner's failure to comply with the requirements of this Section 7, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease, or death, or the injury or destruction to tangible property, except to the extent that such damages, loss and expense was caused by the sole negligence of the party seeking indemnity.
- 8.5 The Owner shall indemnify APS Energy Services for all costs and expenses incurred as a result of such remediation if, without negligence on the part of APS Energy Services, APS Energy Services is held liable for the cost of remediation of hazardous material or substance encountered at the Site solely by reason of performing the Work, as required by this Agreement.
- 8.6 Owner is not responsible for hazardous material or regulated substance brought to the Site by either APS Energy Services or its subcontractors of any tier, or anyone else for whom APS Energy Services is responsible. APS Energy Services agrees to indemnify and hold harmless the Owner, its officers, directors, employees, and agents, from and against all claims, liabilities, costs and expenses, including but not limited to reasonable attorneys fees and expenses, arising out of personal injury (including loss of life) or tangible property damage or loss occurring as a result of APS Energy Services' improper handling, storage, abatement, removal and disposal of any hazardous materials introduced to the Site by APS Energy Services or its subcontractors of any tier.

9.0 **PROGRESS PAYMENTS.**

- 9.1 No later than the fifth (5th) calendar day of each month, APS Energy Services shall deliver to the Owner an itemized payment request (the "**Application for Payment**") "for work performed up to the date of the itemized payment request" in such detail as reasonably necessary to obtain the Owner's approval.
- 9.2 The Owner shall pay each Application for Payment within twenty-one (21) calendar days following the date of receipt, provided that in respect to any given Application for Payment, ten percent (10%) of each such payment shall be retained by Owner until the Work is fifty percent (50%) complete, at which time the retention shall be reduced to five percent (5%) unless otherwise agreed by the parties. The retention shall be held by the Owner until twenty-one (21) days

following the completion and acceptance of the Work, as evidenced by the delivery of a document stating that final completion for the Work has been achieved ("**Certificate of Final Completion**"), signed by the Owner's Representative(s).

- 9.3 The parties acknowledge that, prior to the execution of this Agreement, APS Energy Services conducted a detailed Energy Audit in anticipation of payment therefor under this Agreement. Accordingly, full payment for the Work performed in connection with the Energy Audit shall be billed in the first Application for Payment and shall be paid in accordance with the provisions of this Agreement, except no retention shall be deducted from the payment for the Energy Audit.
- 9.4 Upon receipt of payment from the Owner, APS Energy Services shall promptly pay its design professionals, subcontractors and material suppliers the amount to which each is then entitled pursuant to the provisions of their respective contracts, as represented in the Application for Payment against which Owner's payment was made.
- 9.5 The Owner shall have no obligations pursuant to this Agreement to pay APS Energy Services' design professionals, subcontractors and material suppliers for any portions of the Work.

10.0 FINAL PAYMENT.

- 10.1 Upon completion of the Work and receipt of a signed Certificate of Final Completion, APS Energy Services shall submit to the Owner a final Application for Payment, which shall include all amounts retained by the Owner. Owner shall make final payment no later than thirty (30) calendar days following receipt of the final Application for Payment.
- 10.2 Notwithstanding subsection (a), neither final payments nor amounts retained shall become due until APS Energy Services submits to the Owner: (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness in connection with the Work for which the Owner may be responsible or for which the Owner's property may be encumbered, less amounts being withheld by the Owner, have been paid or have otherwise been satisfied; (2) a certificate evidencing that insurance required to remain in force pursuant to this Agreement is currently in effect and will not be cancelled or allowed to expire until at least a 30-day notice thereof has been given to the Owner; (3) a written statement from APS Energy Services that it knows of no reason why such insurance could not be renewed to cover the period specified in the Agreement; (4) written consent of any surety; and (5) other data establishing payment or satisfaction of obligations in connection with the performance of the Work, as reasonably requested by the Owner. If a subcontractor, or other entity entitled to assert a lien against the Owner's property refuses to furnish a release or waiver, as required by the Owner, APS Energy Services may furnish a bond satisfactory to the Owner to indemnify the Owner for any loss and cost, including reasonable attorney's fees, incurred as a result of any such lien.
- 10.3 Payment of the final Application for Payment for each Phase of the Work shall constitute a waiver of claims by Owner, except those arising from (i) unsettled liens, claims, security interests or encumbrances arising out of the performance of the Work; (ii) failure of the Work performed by APS Energy Services to comply to the provisions of the Agreement; or (iii) special warranty requirements set forth in the Agreement.

11.0 PAST DUE INTEREST PAYMENTS.

Payments due to APS Energy Services in accordance with the provisions of this Agreement, which are not paid when due, shall bear interest at a rate of twelve percent (12%) annually, or the legal prevailing interest rates in the place in which the project is located, whichever is lower, from the date the payment was due until paid.

12.0 CHANGE ORDERS.

- 12.1 A Change Order is a written document, prepared by APS Energy Services and signed by both parties to this Agreement, which signifies an agreement between APS Energy Services and the Owner for a change of the following: (i) changes in the Work described in Exhibit A; (ii) if appropriate, an adjustment to the Contract Amount; and (iii) an adjustment in the schedule set forth in Exhibit B.
- 12.2 If the Owner requests a proposal from APS Energy Services for a change in the Work, and subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse APS Energy Services for any costs reasonably incurred for estimating services, design services and preparation of proposed revisions to the Agreement. No change in the Work (including design estimates) shall be performed by APS Energy Services until the Owner has first signed a written Change Order. APS Energy Services shall provide those costs prior to proceeding with the Work and the estimate shall include all related costs.
- 12.3 If APS Energy Services and the Owner agree to an adjustment of the Contract Amount and the contract schedule established in Exhibit B hereto, such an agreement shall be effective immediately and shall be confirmed by the preparation and execution of a Change Order.

13.0 MINOR CHANGES IN THE WORK.

APS Energy Services shall have the authority to make minor changes in the Work contemplated pursuant to this Agreement, provided, however, that such minor changes are consistent with the intent of Exhibit A, and do not require an adjustment to the schedule or the Contract Amount. APS Energy Services shall promptly notify the Owner's Representative(s) of such changes.

14.0 CONCEALED CONDITIONS.

APS Energy Services shall give Owner prompt written notice if it encounters (i) subsurface or otherwise concealed conditions at the Site which differ materially from those stated in the Agreement or in representations, reports and studies made or provided by the Owner, or (ii) unknown physical conditions of an unusual nature, which are not foreseeable or which differ materially from those ordinarily found to exist in connection with the performance of services substantially similar in nature to the Work to be performed under this Agreement, and which materially differ from those which are generally recognized as inherent in construction activities,. Such notice shall be given no later than twenty-one (21) calendar days after such conditions are first observed and prior to the disturbance of such conditions. The Owner and APS Energy Services shall jointly explore value engineering opportunities in order to overcome the cost and schedule impact of any concealed site conditions encountered, with the intention of executing an appropriate Change Order that addresses changes in the Work, adjustments in the contract amount and changes to the schedule provided in Exhibit B.

15.0 REGULATORY CHANGES

If changes to the Work described in Exhibit A are necessary due to changes in codes, laws or regulations subsequent to the submission of APS Energy Services' proposal, the Owner and APS Energy Services shall jointly explore value engineering opportunities in order to address the cost and schedule impact of such regulatory changes with the intention of executing an appropriate Change Order that addresses changes in the Work, adjustments in the contract amount and changes to the schedule provided in Exhibit B.

16.0 **WARRANTIES; CORRECTION OF THE WORK**

- 16.1 *APS Energy Services shall assign to the Owner, any and all manufacturers' warranties and guarantees applicable to the goods and services provided pursuant to this Agreement, and shall deliver to the Owner copies of all contracts providing for such warranties and guarantees. APS Energy Services shall not, and shall cause its subcontractors not to, take any action that could release, void, impair or waive any warranties or guarantees with respect to any goods or services that it procures from others. On the Owner's behalf, APS Energy Services shall prosecute and bear the costs of prosecuting all claims that may arise with respect to goods or services provided by manufacturers pursuant to this Agreement. The Owner agrees to cooperate with APS Energy Services in the prosecution of such warranty claims.*
- 16.2 APS Energy Services warrants to the Owner that all material and equipment furnished pursuant to this Agreement is new and of good quality, that the construction and installation is free of defects, and that the Work performed pursuant to this Agreement will conform to the provisions of this Agreement.
- 16.3 APS Energy Services warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. APS Energy Services further warrants that upon submission of an Application for Payment all construction for which payments have been requested or received from the Owner shall be free and clear of encumbrances, liens, claims and security interests in favor of APS Energy Services or any other entity performing construction at the Site or furnishing materials and equipment relating to the Work.
- 16.4 APS Energy Services shall promptly correct any Work performed pursuant to this Agreement, which is legitimately rejected by the Owner or known by APS Energy Services to be defective or not in accordance with the provisions of this Agreement, whether such deficiencies are discovered before or after the date of the Certificate of Substantial Completion and whether or not fabricated, installed or completed. As between itself and Owner, APS Energy Services shall bear all costs for such corrections, including any additional testing and inspection.
- 16.5 If within one (1) year from the date of the Certificate of Substantial Completion or any other commencement date of the warranties herein established in accordance with the provisions of this Agreement, any of the Work is found not to conform to the requirements of this Agreement, APS Energy Services shall correct any deficiencies promptly upon receipt of a written notice from the Owner, unless the Owner has agreed to such conditions previously in writing.
- 16.6 **EXCEPT AS EXPRESSLY SET FORTH HEREIN OR AN EXHIBIT ATTACHED HERETO, APS ENERGY SERVICES HAS MADE AND MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED (INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE) WITH RESPECT TO THE WORK.**

17.0 **FINANCIAL PERFORMANCE GUARANTEE**

In order to meet the provision in Arizona Revised Statutes, APS Energy Services offers a financial performance guarantee. APS Energy Services warrants that for _____ (____) years following the date of Substantial Completion (the "Guarantee Period"), Owner following the schedules and maintaining the comfort levels as set out in the Investment Grade Audit ("IGA") attached hereto as Exhibit _____ to the Agreement, Tables _____ in Section ____ of the IGA, dated _____. 200_, and the current provisions of ARS 15-213.01 which govern guaranteed energy cost saving contracts for Arizona _____, Owner shall realize \$_____ in annual utility and operational cost savings ("Expected

Project Savings"), as shown in _____. However, it is agreed that the operational savings portion of the Expected Project Savings shown are fulfilled upon acceptance of this Agreement.

18.0 MEASUREMENT AND VERIFICATION

- 18.1 Measurement & Verification ("M&V") shall be conducted by APS Energy Services or its subcontractor(s) during the design, construction, commissioning, following Substantial Completion, and 11 months following Substantial Completion (Year 1 M&V) prior to the end of the warranty period to confirm that the new equipment and systems perform as projected and will yield the Expected Project Savings. The cost to complete the Year 1 M&V are included in the contract amount. M & V methodologies for each selected energy conservation measure (ECM) are set out in the M& V plan contained in Section 5 of the IGA "and will comply with the requirements of ARS 15-213.01". APS Energy Services, or its subcontractor(s), shall again perform the M&V in year 4 and every three years thereafter for the length of the guarantee period.
- 18.2 Upon Substantial Completion of the Work and after 11 months following the date of Substantial Completion and prior to the end of the warranty period, APS Energy Services or its subcontractor(s), shall perform the M& V plan set forth in Section 5 of Exhibit A for each ECM installed at each Site. APS Energy Services agrees to complete or cause its subcontractor(s) to complete the M&V reports and deliver them to the Owner within forty-five (45) days of Substantial Completion and prior to the completion of the warranty period.
- 18.3 In the event that the M&V report does not verify the Expected Project Savings in accordance with the M&V plan, then APS Energy Services, or its subcontractor(s) shall repair, replace, or substitute the ECM that is not performing at the required level, as identified in the M& V report. If the sum of the ECMs indicates that the Expected Project Savings are exceeded, then no remedy is needed. APS Energy Services or its subcontractor(s) shall re-perform the relevant M& V work for the affected ECM(s) and amend or supplement the M&V report.
- 18.4 If the M& V report demonstrates that the ECM(s) will achieve one hundred percent (100%) of the Expected Project Savings, then APS Energy Services shall have satisfied the energy performance guarantee obligations for the period covered by the M&V report and Owner shall accept the M& V report.
- 18.5 If, after the opportunity to make corrections, the M& V report, as amended, indicates that verified savings are less than the Expected Project Savings for that year as shown in Table_____, then APS Energy Services shall pay Owner within thirty (30) days of Owner's receipt of the M&V report the shortfall amount. Reconciliation of shortfalls, if they occur, will be made annually per ARS 15-213.01. However, under no circumstances will the amount paid for the total of the energy savings shortfalls exceed the principal amount of the contract. Construction period savings dollars and any prior-year, post-project completion excess savings dollars earned shall be used to offset shortfalls identified for an annual reconciliation. No adjustments will be made for the time value of money. The process for reconciliation is described in the following sections.
- 18.6 The Financial Performance Guarantee is subject to the satisfactory performance by Owner of its obligations under this Agreement, including continued occupancy levels, facilities usage, as well as operations and maintenance practices at the sites in accordance with Table _____, Lighting Operating Hours, Table_____, Standards of Operation.

19.0 **INSURANCE.**

- 19.1 APS Energy Services will obtain and maintain during the term of this Agreement comprehensive liability and other insurance in amounts not less than those set forth below. Such insurance shall protect APS Energy Services and the Owner against any claims, losses, liabilities and expenses arising from the Work, whether performed by APS Energy Services or any subcontractor of APS Energy Services. The coverages shall include:
- 19.1.1 Workmen's Compensation and Employers Liability Insurance - \$500,000 each accident; \$500,000 each employee/disease; and \$1,000,000 policy limit.
 - 19.1.2 Comprehensive or Commercial General Liability - Bodily injury liability of \$2,000,000 per occurrence and property damage liability of \$2,000,000 per occurrence, with a deductible not to exceed \$250,000.00.
 - 19.1.3 Comprehensive Automobile Insurance - Bodily injury liability of \$1,000,000 per occurrence and property damage liability of \$1,000,000 per occurrence with a deductible not to exceed \$ 0.00.
 - 19.1.4 Professional Errors and Omissions - \$1,000,000 with a deductible not to exceed \$ 1,000,000.
- 19.2 All policies of insurance required to be obtained and maintained by APS Energy Services (or certificates of insurance relating thereto) shall be obtained from insurers authorized to provide such insurance in the State of Arizona with an AM Best rating of A-VII (A minus seven) or higher, shall name the Owner as additional insured and will require not less than thirty (30) days' prior written notice of cancellation, change or non-renewal. All such coverages will remain in effect until final payment to APS Energy Services for the Work, provided that APS Energy Services shall obtain and maintain "completed operations" insurance with respect to the Work for a period of one (1) year following the date of such final payment.
- 19.3 The Owner will be responsible for insuring its interests by purchasing and maintaining its own property and liability insurance.
- 19.4 If the Owner requires that APS Energy Services maintain any special insurance coverage, policy, amendment, or rider, the Owner shall pay the additional cost thereof, except as otherwise provided in this Section 18.

- 20.0 **APS ENERGY SERVICES** agrees to indemnify and hold harmless Maricopa County, its elected officials, directors, officers, employees, and agents (each an "**Indemnitee**") from and against any and all claims, demands, losses, damages, costs and expenses (including without limitation, the Indemnitee's reasonable attorneys' fees and costs) to the extent actually or allegedly arising or resulting from personal injury (including loss of life) or tangible property damage or loss, caused by the negligence or intentional misconduct of APS Energy Services, employees, agents or subcontractors of any tier in the performance of the Work, provided that this indemnity shall not be construed to extend to claims, demands, losses, damages, costs, or expenses arising from the negligence or willful misconduct of any Indemnitee or its elected officials, directors, officers, employees, agents, or contractors.

The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

The scope of this indemnification does not extend to the sole negligence of County.

21.0 **LIMITATION OF LIABILITY.**

- 21.1 Notwithstanding anything to the contrary in this Agreement, APS Energy Services' liability to Maricopa County shall be limited to unmitigatable direct damages actually incurred by Maricopa County with respect to any and all claims arising out of the performance or nonperformance of APS Energy Services' obligations under this Agreement and shall not in total exceed the amounts paid under this Agreement.
- 21.2 Neither party, nor its respective officers, elected officials, directors, employees, agents, advisers, representatives, affiliates, or successor or assigns will be liable to the other party for any indirect, consequential, special, or punitive damages for any actions resulting from or arising out of this agreement or any order, whether based on contract, warranty, tort (including negligence), strict liability, professional liability, contribution, or otherwise.

22.0 **CLAIMS AND DISPUTES.**

If a dispute arises concerning this Agreement, a meeting of the parties shall be held within ten (10) business days after either party gives the other party written notice of the dispute (the "**Dispute Notice**"). The Dispute Notice shall set forth in reasonable detail the aggrieved party's position and its proposal for resolution of the dispute. A representative of each party who has authority to resolve the dispute shall be in attendance at all meetings. If the dispute is not resolved within 30 calendar days after the first meeting of the parties ("Discussion Period"), either party is free to use any other available remedy, including mediation, arbitration or litigation. The discussions thus undertaken will be deemed privileged and confidential as settlement discussions, and no statement made by a party during these discussions may be introduced as evidence against the party making the statement. The Dispute Notice and Discussion Period are conditions precedent to each party's right to resort to any other method. A party's failure to comply with this Section shall entitle the other party to recover its costs and reasonable attorney's fees in any judicial proceedings that circumvent this dispute resolution provision.

23.0 **EVENT OF DEFAULT**

If a party to this Agreement (the "Defaulting Party") fails to perform its obligations pursuant to this Agreement, and such failure is not excused pursuant to Section 23, Force Majeure, then the other party (the "Non-Defaulting Party") may elect to terminate this Agreement if the Defaulting Party fails to cure the default-causing event within the time frame specified in subsections 22 (a) through 22 (c), as applicable:

- 23.1 In respect to the payment of moneys, the Defaulting Party has not cured the default within five (5) business days after receipt of a written notice of default from the Non-Defaulting Party; or,
- 23.2 In the event of a bankruptcy, immediately; or,
- 23.3 In the case of other material default the Defaulting Party has not cured the default within thirty (30) days after receipt of a written notice of default from the Non-Defaulting Party.

24.0 **FORCE MAJEURE.**

- 24.1 Neither party shall be in default of its obligations under this Agreement (excepting the obligation to pay moneys when due) to the extent its inability to perform results from Force Majeure, as defined in subsection (b) of this Section; provided, however, that an event of Force Majeure shall

not relieve a party of its obligations that arise prior to the occurrence of the event. APS Energy Services will be entitled to have the Work schedule extended by the period of one (1) business day for each business day lost on account of the Force Majeure. The party affected by Force Majeure shall give written notice of the occurrence giving rise to the Force Majeure to the other party within five (5) business days following the start of the occurrence. The affected party shall exercise all due diligence to overcome an event of Force Majeure causing a delay to its performance.

- 24.2 For the purposes hereof, "**Force Majeure**" means any cause or causes beyond the reasonable control of the party which, as a result thereof, is unable to perform its obligations, including, without limitation, the following: an act of God; explosion; fire; flood; drought; epidemic; earthquake; storm; riot; insurrection; blockage; war, act of terrorism or other hostilities; strike; lockout or other industrial disturbance (even if such labor difficulty may have been avoided or may be settled by acceding to the demands of the party in dispute); act or restraint of governmental authority, whether valid or invalid, and action or inaction by any such authority which causes the lapse of necessary governmental authorizations, permits, license, certificates or approvals; shortage of supplies; utility power outages; interruption or curtailment of transmission or distribution of power; material breakage of or accidents to, machinery or equipment; and any other cause or event, whether foreseen or unforeseeable, which is reasonably beyond the control of the party claiming Force Majeure and which the affected party is not able to overcome by the exercise of reasonable diligence, provided that no party will be required to settle any strike, lockout or other industrial disturbance on terms which in its sole discretion are unsatisfactory.

25.0 **ASSIGNMENT AND DELEGATION.**

Neither party hereto may assign its rights or delegate its duties pursuant to this Agreement without the prior written consent of the other party, which consent will not be unreasonably withheld, delayed or conditioned, provided that APS Energy Services may assign its rights and delegate its duties to an affiliate or subsidiary, and APS Energy Services may retain the services of subcontractors to perform any portion of its duties pursuant hereto.

26.0 **NOTICES.**

All notices given pursuant to this Agreement shall be in writing and shall be effective (i) upon receipt by the addressee if personally delivered or delivered via confirmed facsimile transmission, (ii) on the day following delivery to an overnight delivery service for immediate prepaid delivery to the addressee or (iii) three (3) days following deposit with the United States Postal Service, postage prepaid, in any such case addressed to the Representative(s) designated by the parties under Sections 3(c) and 5(b), respectively. In APS Energy Services' case a copy shall also be provided as follows:

APS Energy Services Company, Inc.
P. O. Box 53901, Mail Station 8103
Phoenix, AZ 85072-3901
Attn: Robert Georgeoff
Telephone: (602) 744-5478
Facsimile: (602) 744-5215
E-mail: Robert.Georgeoff@apses.com

27.0 **GOVERNING LAW**

This Agreement shall be construed and interpreted in accordance with the laws of the State of Arizona. Jurisdiction and venue for any action to enforce this Agreement shall be in the Superior Court of Maricopa County, Arizona.

28.0 **NO WAIVER**

No waiver by any party of any breach of the provisions of this Agreement by the other party will in any way be construed to be a waiver of any future breach of the same or any other provision or preclude such party from insisting on strict performance of the provisions of this Agreement.

29.0 **EMISSION RIGHTS, CREDITS, OR ALLOWANCES**

Any air, water, or other emission right, credit, or allowance or other privilege or matter or value associated with, or arising on account of, the Work pursuant to this Agreement shall be the exclusive property of the Owner.

30.0 **COMPLETE AGREEMENT; PAROLE EVIDENCE**

This Agreement is intended by the parties to be a final, complete and exclusive expression of their agreement regarding the subject matter hereof, and supercedes any and all prior agreements and memoranda between the parties with respect to the subject matter hereof. No prior agreement or prior course of dealings between or among the parties and no usage of the trade will be relevant to supplement or explain any term used in this Agreement. Acceptance or acquiescence in a course of performance tendered pursuant to this Agreement will not be relevant to determine the meaning of this Agreement even if the accepting or acquiescing party has knowledge of the nature of the performance and opportunity for objection.

IN WITNESS THEREOF, the parties have caused this Agreement to be executed and delivered by their duly authorized officers as of the date first above written.

APS Energy Services Company, Inc.

Customer

By: _____

By: _____

Its: _____

Its: _____

APS ENERGY SERVICES, 400 E. VAN BUREN STREET SUITE 750, PHOENIX, AZ 85004

PRICING SHEET: NIGP CODE 9101601

Terms:	NET 30
Vendor Number:	W000013095 X
Telephone Number:	602/744-5000
Fax Number:	602/744--5215
Contact Person:	Bob Georgeoff
E-mail Address:	Robert.Georgeoff@apses.com
Certificates of Insurance	Required
Contract Period:	To cover the period ending August 31, 2011.